

DATE

James Graham  
Healthy School Foods Collaborative  
701 Loyola Avenue, Suite 201  
New Orleans, Louisiana 70113

Re: **Docket No. 2022-030**  
**Advisory Opinion**

Dear Mr. Graham:

The Louisiana Board of Ethics, at its meeting on March 4, 2022, considered your request for an advisory opinion as to whether the Code of Governmental Ethics (“Code”) would prohibit the Healthy School Foods Collaborative from contracting with both charter schools and third-party food service management companies.

#### FACTS PROVIDED

The Healthy School Foods Collaborative (“HSFC”) is a private, non-profit entity that provides food program consulting services to charter schools, school districts, private schools, and other community organizations. HSFC’s expertise is in the administration of National School Lunch Programs, School Breakfast Programs, and Child and Adult Care Food Programs, all of which are funded through the United States Department of Agriculture (“USDA”).

HSFC provides the following services to schools: assistance with the creation of a school food authority, point of sale software set-up and management, comprehensive audit support, wellness plan creation and implementation, request for procurement process management, assistance with the renewal of existing food service management contracts between the school and the third-party company, lunch application processing, organize documentation and support for the USDA Child Nutrition Program, assistance with implementation of summer school food service, and the implementation of after-school and snack reimbursement programs. All program requirements are dictated by the USDA.

In addition to providing services to schools, HSFC would like to offer its services directly to third-party food service management companies, including companies that contract with its school clients. The proposed scope of services to be offered to food service management companies includes review of production records and pictures to ensure standards, as well as completion of on-site visits, trainings, and reviews.

You stated that HSFC was not created by any governmental entity and that it performs services for private entities as well as public entities. You further stated that your employees are not under the supervision of any elected official or public employees involved with the schools.

### ANALYSIS

The Louisiana Supreme Court, in *PIAL v. Theriot*, 09-1152 (La. 3/26/10), 31 So.2d 1012, 1015, citing *State v. Smith*, 357 So.2d 505 (La.1978), specified that all four of the following factors must be present to determine an entity's public character: (1) whether the entity was created by the legislature, (2) whether its powers were specifically defined by the legislature, (3) whether the property of the entity belongs to the public, and (4) whether the entity's functions are exclusively of a public character and performed solely for the public benefit.

Here, HSFC was neither created by, nor its powers defined by, the legislature or any other governmental entity. Additionally, HSFC provides services to both public and private entities. As a result, HSFC does not meet any of the factors to be considered a public entity.

Further, La. R.S. 42:1102(18)(a) defines a "public employee," in pertinent part, to mean anyone, whether compensated or not, who is: (iii) engaged in the performance of a governmental function; or (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

HSFC only performs consulting services in connection with school food services; HSFC does not perform the actual school food services. Additionally, HSFC is not under the supervision of any school employees when providing consulting services.

### CONCLUSION

The Board concluded, and instructed me to inform you, that, under these facts, neither HSFC, nor its employees, are "public employees" subject to the Code.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. The Board issues no opinion as to past conduct and or to laws other than the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions contained in the Louisiana Gaming Control Law.

If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

**LOUISIANA BOARD OF ETHICS**

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David M. Bordelon  
For the Board